

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 January 2007

Case No.: 2006-AIR-00011

In the Matter of:

DAVID PEELER,

Complainant,

v.

MIAMI AIR INTERNATIONAL, INC.,

Respondent.

ORDER APPROVING WITHDRAWAL OF COMPLAINT

This proceeding arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR 21"), 49 U.S.C. § 42121, *et. seq.*

AIR 21 prohibits an air carrier from discharging or otherwise discriminating against any employee who provides the employer or federal government with information about a violation of any order, regulation, or standard of the Federal Aviation Administration ("FAA") or any other federal law that pertains to air carrier safety.

The Complainant in this case filed a complaint against Miami Air International, Inc. for violating AIR 21. Objections to the findings of the Occupational Safety and Health Administration (OSHA) led to a request for a hearing before an administrative law judge. However, no hearing date has been set.

In a letter dated November 22, 2006, Mr. Peeler noted his desire to withdraw both his hearing request and his objections to the OSHA findings. This letter stated that the Complainant was withdrawing the above-referenced matter with prejudice and that Miami Air International, Inc. agreed not to seek attorney's fees or costs from the Complainant. This letter was signed by the attorneys representing both the Complainant and the Respondent.¹

The regulations provide that, at any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written request for withdrawal with the administrative law judge. 29 C.F.R. § 1979.111 (2003). Such withdrawals must be approved by the administrative law judge.

¹ A Notice of Settlement and Dismissal with Prejudice was attached to the letter dated November 22, 2006. It is clear that this Notice should have been entitled "Motion to Withdraw Complaint" and it will thus be treated as a Motion to Withdraw.

Since the Complainant was represented by experienced counsel in this matter, there is no reason to believe that the Complainant's withdrawal is coerced or based on any unlawful promise. The undersigned finds that there is good cause for the withdrawal and approves the Complainant's request.

It is, therefore,

ORDERED that this complaint is hereby Dismissed with Prejudice.

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RICHARD K. MALAMPHY
Administrative Law Judge

RKM/kbe
Newport News, Virginia

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).